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[Ed. Note.—For other cases, see *Fish*, Cent. Dig. § 15; Dec. Dig. § 7 (3).* 6 Va.-W. Va. Enc. Dig. 143.]

Error to Circuit Court, Elizabeth City County.

Action by S. J. Watson, Sr., against the City of Hampton. Judgment for plaintiff, and defendant brings error. Reversed.

W. C. L. Taliaferro, of Hampton, and *J. A. Massie*, of Newport News, for plaintiff in error.

S. J. Dudley and *C. V. Spratley*, both of Hampton, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* WINSTEAD'S ADM'R.

June 8, 1916.

[89 S. E. 83.]

1. Street Railroads (§ 81 (1)*)—Injuries to Persons on Track—Negligence.—An essential ingredient of negligence is that it involves the violation of a legal duty which one person owes to another, and without showing such violation of duty no recovery for the death of one run down by a street car can be had.

[Ed. Note.—For other cases, see *Street Railroads*, Cent. Dig. §§ 172, 173; Dec. Dig. § 81 (1).* 12 Va.-W. Va. Enc. Dig. 840.]

2. Street Railroads (§ 81 (5)*)—Headlights—Duty to Use.—In the absence of statute or municipal ordinance, a street railway company is bound to provide its cars with headlights to warn persons on the street of the approach of the cars, and to enable the operators to avoid injuring others using the street.

[Ed. Note.—For other cases, see *Street Railroads*, Cent. Dig. § 174; Dec. Dig. § 81 (5).* 12 Va.-W. Va. Enc. Dig. 840.]

3. Street Railroads (§ 101*)—Injuries to Persons on Tracks—Duty of Care.—Where a person becomes intoxicated and lies down in the street near street car tracks, so that at night his presence can hardly be distinguished, he occupies a position similar to that of the trespasser on the steam railroad right of way, and the street car company owes him no duty save to avoid injuring him after discovering his peril.

[Ed. Note.—For other cases, see *Street Railroads*, Dec. Dig. § 101.* 12 Va.-W. Va. Enc. Dig. 845.]

4. Street Railroads (§ 93 (4)*)—Injuries to Persons on Tracks—Negligence.—Where the motorman in charge of a street car saw an object near the tracks which he took to be a pile of trash and did not discover that it was an intoxicated man until too close to stop the car, the company is not liable, for the motorman was not required to stop the car before ascertaining that the supposed trash was a human being.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 197; Dec. Dig. § 93 (4).* 12 Va.-W. Va. Enc. Dig. 846.]

5. Negligence (§ 136 (5)*)—Province of Court.—Where a ground of negligence is wholly unsupported by the evidence, the court may charge the jury to disregard it.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 282-284; Dec. Dig. § 136 (5).* 10 Va.-W. Va. Enc. Dig. 412.]

6. Street Railroads (§ 112 (1)*)—Injuries to Persons on Tracks—Burden of Proof.—Where plaintiff, suing for the death of one run down by a street car, contended that if the car had not been overloaded it could have been stopped in time to have avoided the injury, plaintiff had the burden of proving that fact.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 227, 228; Dec. Dig. § 112 (1).* 12 Va.-W. Va. Enc. Dig. 846.]

7. Street Railroads (§ 114 (7)*)—Injuries to Persons on Tracks—Evidence.—In an action for the death of one run down by a street car, evidence held insufficient to show that the overloading of the car prevented the motorman from stopping it in time to avoid the injury.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 244; Dec. Dig. § 114 (7).* 12 Va.-W. Va. Enc. Dig. 846.]

Error to Circuit Court of City of Norfolk.

Action by W. E. Winstead's Administrator against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

W. H. Venable, of Norfolk, and *H. W. Anderson* and *A. D. Christian*, both of Richmond, for plaintiff in error.

Jas. H. Corbitt, of Suffolk, and *Jeffries & Jeffries*, of Norfolk, for defendant in error.

LANCASTER v. STOKES.

June 8, 1916.

[89 S. E. 85.]

1. Exceptions, Bill of (§ 40 (2)*)—Signature—Time—Authority to Order Extension.—A hustings court judge has no jurisdiction to make an order extending the time for signing a bill of exceptions beyond the statutory period.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. § 58; Dec. Dig. § 40 (2); Judges, Cent. Dig. § 149.* 5 Va.-W. Va. Enc. Dig. 392.]

2. Appeal and Error (§ 554 (2)*)—Bill of Exceptions—Failure to Promptly Settle—Effect.—A writ of error will not be dismissed be-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.